

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-2003-18 and should be submitted by August 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48274; File No. SR-NASD-2003-102]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Modifying Interpretive Material 4613 To Provide a New Approval Process for Authorizing Computer Generated Quoting**

August 1, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 26, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(1)<sup>4</sup> thereunder, in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposal effective upon filing with the Commission. Nasdaq amended the proposed rule change on July 17, 2003.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq proposes to modify Interpretive Material 4613 ("IM 4613"). The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> See July 17, 2003 letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq provided new rule language that completely replaces and supersedes the original proposed rule language, and made corresponding changes to the description of the rule in the notice. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on July 17, 2003, the day Nasdaq filed Amendment No. 1.

**IM-4613. Autoquote Policy**

(a) No change.

(b) No change.

(c) Computer Generated Quoting—

(1) Definition—"Computer Generated Quoting" means the practice of effecting, without a physical entry, a quote update that is not designed to keep a market maker's quote away from the Nasdaq and/or national best bid/best offer, but does not include the activity set forth in subparagraph (b) of this interpretive material.

(2) Prohibition—The prohibitions against autoquoting contained in paragraph (a) of this interpretive material shall also apply to the practice of Computer Generated Quoting unless the market maker [meets the conditions in] *obtains Nasdaq's prior approval, pursuant to* subparagraph (c)(3) of this interpretive material, *to engage in Computer Generated Quoting and such approval has not been revoked or otherwise withdrawn.*

(3) Exception—A market maker may *request approval to engage in the practice of Computer Generated Quoting [if the market maker: prior to engaging in such activity provides Nasdaq a description of its Computer Generated Quoting system; requests and obtains written interpretive relief from Nasdaq staff stating that the market maker's Computer Generated Quoting system is permissible under Interpretive Material 4613; and complies with terms that are set forth in the interpretive relief.] by submitting to Nasdaq a completed application in the form prescribed by Nasdaq and by agreeing, in the form prescribed by Nasdaq, to notify Nasdaq at least five business days in advance of any changes to the information previously provided, to comply with the terms of this Interpretive Material 4613, and to abide by any additional conditions related to Computer Generated Quoting, which Nasdaq may impose from time to time. A properly completed application is deemed approved at close of business on the fifth business day after the day on which it is received by Nasdaq unless Nasdaq notifies the applicant by e-mail or fax that the application has been denied; provided, however, that any approval deemed granted hereunder may be withdrawn by Nasdaq at any time and is subject to any and all terms, conditions and limitations that Nasdaq may impose from time to time. [In establishing terms of the interpretive relief,] Nasdaq may reject an application, impose conditions or revoke a previously granted approval: (i) In furtherance of applicable laws or NASD rules, (ii) in order to protect the*

<sup>12</sup> 17 CFR 200.30-3(a)(12).

*integrity of Nasdaq's systems, considering [shall consider] the applicant's impact on Nasdaq's capacity, in conjunction with the overall impact on Nasdaq's capacity of existing Computer Generated Quoting systems authorized by Nasdaq, or (iii) in order to protect [as well as the protection of] investors and the public interest. [If a market maker that engages in Computer Generated Quoting fails to comply with the terms set forth in the interpretive relief,] Furthermore, Nasdaq may summarily modify or revoke the approval [interpretive relief] and/or summarily suspend [such quoting] a firm's Computer Generated Quoting activity if the firm has not complied with any, some or all of the terms of approval and/or with any previously imposed conditions [necessary to preserve capacity and to protect investors and the public interest].*

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Nasdaq seeks to streamline the process of obtaining an authorization pursuant to IM 4613 to engage in Computer Generated Quoting ("CGQ"). Currently, a firm seeking such an authorization provides certain information about its CGQ system in a letter to Nasdaq. Nasdaq then grants approval by sending an appropriate response letter to the requesting firm; such a letter also details the applicable conditions of the approval.<sup>6</sup>

Under the proposed rule change, a firm wishing to obtain CGQ authorization would be required to submit to Nasdaq a standard application form, which seeks certain information

that Nasdaq needs in order to ensure that the proposed CGQ activity will not degrade Nasdaq's systems or otherwise undermine Nasdaq's ability to protect investors and the public interest. The information sought in the application form is of the same type as the information Nasdaq has sought from firms requesting CGQ authorization in the past. The application form also contains a certification and agreement section, to be executed by the applicant firm, in which the firm would promise to notify Nasdaq of any changes to the information previously provided in connection with CGQ and to comply with any existing or future restrictions on (including termination of) the practice of CGQ with respect to some or all quotes. Nasdaq represents that it will notify approved firms of any future conditions on CGQ authorization in writing either individually, if the condition applies to a particular firm, or through a rule filing with the Commission, if it applies globally.<sup>7</sup>

Under the proposed rule change, Nasdaq will have five business days to reject an application. If an application is not rejected within this time frame, it will be deemed approved. In the case of rejection, Nasdaq will notify the applicant firm by e-mail or fax and, if possible, by telephone (one call will be made to the number listed in the application; if the listed contact is not available, a message will be left if possible).

Nasdaq may reject an application, impose conditions (either at the time of initial approval or at any time thereafter), or revoke a previously granted approval: (a) In furtherance of applicable laws or NASD rules; (b) in order to protect the integrity of Nasdaq's systems, including preserving sufficient system capacity; or (c) in order to protect investors and the public interest. Furthermore, Nasdaq may further condition or revoke approval at any time if a firm has not complied with any, some, or all of its obligations contained in the certification and agreement section of the application (such as, but not limited to, the obligation to notify Nasdaq in advance of any changes) and/or with any previously imposed conditions.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>8</sup>

including Section 15A(b)(6) of the Act,<sup>9</sup> which requires that the rules of the NASD foster cooperation and coordination with persons engaged in facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market. Nasdaq believes that the proposed rule change will make the process of applying for CGQ authorization simpler and add speed and certainty to the process. Since an authorization would be deemed granted five business days after a completed application is received by Nasdaq, applicant firms would be able to plan the relevant aspects of their business accordingly.

### B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,<sup>10</sup> and Rule 19b-4(f)(1)<sup>11</sup> thereunder, in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission,

<sup>6</sup> Firms that have already received approval to engage in CGQ will not need to re-apply by virtue of this proposed rule change so long as such firms remain in compliance with the conditions stated in their respective approval letters.

<sup>7</sup> Telephone conversation between Katherine A. England, Assistant Director, Joseph A. Morra, Special Counsel, and Leah Mesfin, Attorney, Commission and Alex Kogan, Associate General Counsel, Nasdaq on July 30, 2003.

<sup>8</sup> 15 U.S.C. 78o-3.

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(1).

all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-102 and should be submitted by August 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48279; File No. SR-NASD-2003-52]

### Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a Fee for Receipt of Mutual Fund Quotation Service Data by Distributors

August 1, 2003.

On March 24, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to establish a \$1,000 per month distributor fee for receipt of mutual fund information through Nasdaq's Mutual Fund Quotation Service ("MFQS"). The fee would be assessed on all distributors, as defined in proposed NASD Rule 7090(e)—*i.e.*, firms that receive the data and distribute it to third parties.

The proposed rule change was published for comment in the **Federal Register** on April 24, 2003.<sup>3</sup> By letters dated, respectively, May 30, 2003 and July 18, 2003, Nasdaq clarified the scope

and purpose of the fee.<sup>4</sup> The Commission received no comments on the proposed rule change.<sup>5</sup>

The Commission has carefully reviewed the NASD's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of Section 15A of the Act<sup>6</sup> and the rules and regulations thereunder.<sup>7</sup> The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(5) of the Act<sup>8</sup> because the fee will be assessed against all firms that receive the Nasdaq MFQS data and distribute it to third parties. In addition, Nasdaq represents that the amount of the fee is sufficient to compensate Nasdaq for services it provides to distributors and their subscribers by collecting and processing the mutual fund data feed, producing the data feed, and providing data quality services. At the same time, Nasdaq believes the amount of the fee will not discourage wide distribution of the data.<sup>9</sup>

Finally, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act<sup>10</sup> because vendors are free to choose whether to receive the data, and the fee is uniformly charged

<sup>4</sup> See: letter from Eleni Constantine, Office of the General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), dated May 30, 2003 ("first clarifying letter"); and letter from Eleni Constantine, Office of the General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division, dated July 18, 2003 ("second clarifying letter").

<sup>5</sup> Nasdaq has consented to an extension of time for Commission action on the proposal until August 1, 2003, under Section 19(b)(2)(B) of the Act.

<sup>6</sup> 15 U.S.C. 78o-3.

<sup>7</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> Section 15A(b)(5) of the Act requires that the rules of national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. 15 U.S.C. 78o-3(b)(5).

<sup>9</sup> In its first clarifying letter, Nasdaq represented that mutual fund data is delivered through the legacy data feeds. Nasdaq stated that these products provide MFQS data, OTC Bulletin Board data and index data. Nasdaq represented that the legacy data feed products operate at a very substantial deficit without this new fee. In determining how to reflect these costs in the fee Nasdaq estimated the likely population of users. Its best estimate was that the population of users was probably similar to the firms that pay Nasdaq's index distribution fee. Nasdaq believed that it could most fairly spread the costs over the estimated population if the fee were set at \$1,000.

<sup>10</sup> Section 15A(b)(6) of the Act requires that the rules of an association not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. 15 U.S.C. 78o-3(b)(6).

to all firms that receive the data and distribute it to third parties; to the extent that Nasdaq.com chooses to so receive and distribute the data, it too will be assessed the fee.<sup>11</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NASD-2003-52) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48280; File No. SR-NASD-2003-119]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Index Leveraged Stock Market Return Securities Based Upon the Nasdaq-100 Index

August 1, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 1, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>11</sup> In this regard, in its second clarifying letter, Nasdaq represents that, before creation of the internal securities information processor ("SIP") about a year ago, the Nasdaq proprietary data that comprises the mutual fund data was built into the feed that dealers were required to take. Nasdaq also represents that, with the creation of the internal SIP, the mutual fund data at issue has been separated out from the core SIP data and is provided over a feed that only contains Nasdaq proprietary data. Nasdaq states that this proposal enables vendors to choose whether to take the mutual fund data, without affecting their ability to take the required consolidated data through the SIP. Finally, Nasdaq states that, to the extent that vendors (including Nasdaq.com) choose to take this data and to gain value by redistributing it, Nasdaq will charge a fee for this data, which it incurs costs in compiling.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 47688 (April 17, 2003), 68 FR 20199.